

EXHIBIT I

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANTHONY MANGANIELLO,

Plaintiff,

Index No.
-against- 07 CIV 3644 (HB)

THE CITY OF NEW YORK, DET. LUIS AGOSTINI,
individually and as a New York City Police
Detective, SHAWN ABATE, individually and as
a New York City Police Detective, DEREK
PARKER, individually and as a New York City
Police Detective, LT. HENRY SCOTT,
individually and as a New York City Police
Lieutenant, P.O. ALEX PEREZ, individually
and as a New York City Police Officer, P.O.
MIRIAN NIEVES, individually and as a New
York City Police Officer, MICHAEL PHIPPS,
individually and as the Commanding Officer
of the 43rd Precinct, JOHN MCGOVERN,
individually and as a New York City Police
Sergeant, ROBERT MARTINEZ, individually and
as a New York City Police Detective, GERYL
MCCARTHY, individually and as a New York
City Police Inspector,
Defendants.

-----X

December 20, 2007
10:25 a.m.

DEPOSITION of DET. LUIS AGOSTINI



ORICO Reporting, Inc.
Court Reporting • Video • Transcription
170 West 10th Street, Suite 1000, New York, NY 10011

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Agostini

2

A I put it with my files.

3

Q And where is that memo book now?

4

A It's missing with the files.

5

Q Do you have a recollection of
6 what information was contained in Anthony
7 Manganiello's memo book?

8

A I don't remember that.

9

Q Do you have any recollection as
10 to whether a sergeant signed off on Anthony
11 Manganiello's memo book in the early
12 morning?

13

MS. FROMMER: Objection.

14

A I don't remember that either.

15

Q Now, do you know whose decision
16 it was to take gunshot residue swaps from
17 Anthony Manganiello's hand?

18

A I don't know, no.

19

MS. FROMMER: Objection.

20

Q Did you ever learn what the test
21 results were from those gunshot residue
22 tests?

23

A I believe the district attorney
24 told me that it was something like
25 inconclusive.

1 Agostini

2 Q Were those also lost?

3 A Yes.

4 Q Were those gunshot residue tests
5 provided to the district attorney's office
6 before they were lost?

7 MS. FROMMER: Objection. You
8 can answer.

9 A Like I said, I believe she saw
10 them and she relayed to me what they were,
11 because it was very confusing to me.

12 Q When did the district attorney
13 relay the results of the gunshot residue
14 tests to you?

15 A I don't remember.

16 Q Was it shortly before Anthony
17 Manganiello's criminal trial in 2004?

18 MS. FROMMER: Objection.

19 A Yes. Not shortly. It was
20 before I guess his arrest, I believe. So in
21 April, he was arrested in April.

22 Q Sir, did you provide the
23 assistant district attorney with the gunshot
24 residue tests prior to April of 2001?

25 A Prior to?

1 Agostini

2 Q Could you have called the people
3 in the other state who did the test and
4 asked what do these words mean?

5 MS. FROMMER: Objection.

6 A I could have.

7 Q Is there any reason you didn't?

8 A Because I took the word of the
9 DA's office.

10 Q Prior to his arrest in 2001, did
11 you provide those gunshot residue tests to
12 the ADA?

13 MS. FROMMER: Which arrest?

14 MR. JOSEPH: April 2001.

15 MS. FROMMER: You can answer.

16 Q Do you understand my question?

17 A Yes. They looked at it. Did I
18 provide? Did they make copies. I don't
19 know whether they made copies or not, but
20 they saw the document.

21 Q So is it your testimony that
22 prior to August of 2001 when Anthony
23 Manganiello was arrested the district
24 attorney's office had the results of the
25 gunshot residue test?

Agostini

MS. FROMMER: April.

Q Prior to April of 2001 when Anthony Manganiello was arrested for the homicide of Albert Acosta, is it your testimony that the district attorney's office had the gunshot residue tests?

MS. FROMMER: Objection. Prior to the date in April when he was arrested?

MR. JOSEPH: Yes.

MS. FROMMER: You can answer.

A Did they have it?

Q Yes.

A I know they looked at it because she told me what it said. I don't know whether -- did they have it like in their possession? Yes, they had it in their possession. I don't know whether they made copies or not. I know I received that document back. Whether they have copies or not I don't know.

Q Sir, what's your understanding of an inconclusive gunshot residue test, the significance of an inconclusive gunshot

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Agostini

2 Q And did you ever turn over the
3 handwritten statements of the various
4 officers who took witness statements to the
5 ADA?

6 A Sir, my whole file I gave to the
7 DA so she can make copies. As far as I am
8 giving them from my hand those statements
9 that you are saying, no, I give them the
10 whole file, and they make whatever copies
11 they have to make, whatever is in there they
12 are supposed to make.

13 Q When did you give the whole file
14 to the ADA's office?

15 A I can't remember.

16 Q Was it before Anthony
17 Manganiello was arrested in April of 2001 or
18 after?

19 A I can't say.

20 Q Can you give me any indication
21 at all as to when this file was given to the
22 ADA?

23 A I don't know. I can't guess a
24 day.

25 Q Sir, do you have a recollection

1 Agostini

2 of physically giving the file concerning
3 Anthony Manganiello to a specific ADA?

4 A Yes.

5 Q What was the name of the ADA?

6 A ADA Scaccia.

7 MR. JOSEPH: S-C-A-C-C-I-A.

8 Q By the way, were the results of
9 the gunshot residue test in the box when you
10 gave it to ADA Scaccia?

11 A Yes.

12 Q Now, while at the 43rd Precinct
13 back in 2001 through 2004, after an arrest
14 had been made but before it had been
15 resolved by plea or conviction, was a
16 detective still assigned to monitor the
17 file?

18 A Monitor it, no.

19 Q Was a detective still assigned
20 to a file for any reason?

21 MS. FROMMER: Objection.

22 A Only if it's open.

23 Q Is it your testimony that after
24 a case is closed by arrest the detectives
25 have no further responsibility for

1 Agostini

2 A Like I said, I just said if he
3 gave me a person, I went to check out a
4 certain person and it wasn't true.

5 Q Did you know what he was in
6 Rikers Island for?

7 A I could get --

8 MS. FROMMER: Don't guess.

9 A I don't know.

10 Q If I were to suggest to you
11 attempted murder, would that ring a bell?

12 MS. FROMMER: Objection.

13 A I don't remember.

14 Q Did you ever do a background
15 check on Terrence Alston?

16 A I probably did, yes.

17 Q Was that background check kept
18 in the case file?

19 A Yes.

20 Q Is that one of the documents
21 that's also missing?

22 A Yes.

23 Q Do you know if the ADA had a
24 copy of that background check?

25 A I gave my case file to them. I

1 Agostini

2 don't know whether they made the copies or
3 not.

4 Q Was the background check in the
5 case file when you gave it to the ADA?

6 A Yes.

7 Q Do you remember any information
8 about the background check on Mr. Alston?

9 A The only thing I can remember is
10 that he is a gang member.

11 Q Do you remember what gang he was
12 a member of?

13 A Bloods.

14 Q Was Mr. Alston African American?

15 A Yes.

16 Q In that section of the Bronx,
17 did the Bloods tend to be African American?

18 MS. FROMMER: Objection.

19 A Tend, no. I have seen a lot of
20 Spanish also, yes.

21 Q Did you become aware of any
22 problems between the Bloods and Mr.

23 Acosta --

24 MS. FROMMER: Objection.

25 Q -- as part of your

1 Agostini

2 A I don't think so.

3 Q By the way, did you ever tell
4 ADA Scaccia that Terrence Alston hid things
5 from you?

6 A Yes, I told her that I went to
7 check a certain person out and he wasn't it,
8 yes.

9 Q What do you mean you went to
10 check a person out and he wasn't it? What
11 do you mean by that?

12 A Well, he told me about a guy
13 that sold a gun, that sold a gun to him.

14 Q To Anthony Manganiello?

15 A Right. And I went to interview
16 him, and that came back negative.

17 Q In other words, was the
18 gentleman's name Johnny Baker?

19 A I don't know whether it was him
20 or not. I can't remember that person.

21 Q Did you receive false
22 information from Terrence Alston on more
23 than one occasion?

24 MS. FROMMER: Objection.

25 A Just that particular occasion.

1 Agostini

2 Q I think you indicated before
3 that you had doubts as to Terrence Alston;
4 is that correct?

5 A Because of information, of
6 course, yes.

7 Q Did you convey those doubts to
8 anybody in the assistant district attorney's
9 office?

10 A Well, not my doubts, but I told
11 him he gave me bad information that came
12 back negative.

13 Q Who did you tell that to?

14 A ADA Scaccia.

15 Q And what did she say when you
16 told her that?

17 A That they were going to speak to
18 Derek Parker I guess, what's going on, yes.

19 Q Did you take any further steps
20 regarding Mr. Alston?

21 A Did I take further steps? No.

22 Q Were you aware of what the
23 sentence Mr. Alston was serving at the time
24 that the Manganiello investigation came up?

1 Agostini

2 can answer.

3 A Say that again.

4 Q What did you say to Alston, and
5 what did Alston say to you the first time
6 you met him?

7 A Basically he gave a story.

8 Q What was the story he gave?

9 A The story is that he was
10 approached by a Parkchester security guy for
11 a gun that he wanted to kill another
12 security guy.

13 Q Did he agree to kill this guy?

14 MS. FROMMER: Objection.

15 Q Did Alston agree to kill
16 somebody?

17 A No. I'm not saying he hired him
18 to kill him.

19 Q Tell me what the story was.

20 A The story was that a security
21 guard from Parkchester approached him and
22 asking him for a gun so he, the security
23 guy, could kill another security guy.

24 Q Did you provide Mr. Alston with
25 any information concerning the homicide of

Agostini

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A We don't have a tape recorder.

Q On February 15, 2001, did Terrence Alston tell you that a friend of his named Johnny Baker sold Anthony Manganiello a gun?

MS. FROMMER: Objection.

A That's what he says here on the thing, yes.

Q Is that what he told you?

A That's what he said, yes.

Q I show you what's been previously marked as Plaintiff's Exhibit 10. Do you recognize this document?

A Yes, I do.

Q What do you recognize it to be?

A Interview with a Johnny Baker, which I say I can't remember him. I can't remember a Johnny Baker, but this is the interview I did with Johnny Baker.

Q Do you have any recollection as you sit here today of that interview?

A Recollection, no. I just remember that I interviewed someone and basically asked him did he sell a gun to the

1 Agostini

2 Damon.

3 Q Did you play any role in getting
4 Mark Damon to appear at the assistant
5 district attorney's office?

6 A No. I didn't play a role in it.
7 I knew he was coming in, okay, but like I
8 said, I really have, you know, no dealings
9 with Terrence. So that was between
10 Detective Parker and ADA Scaccia. When they
11 called me to say, "He's here. Come to the
12 DA's office," that was the first time I ever
13 seen this person.

14 Q How did you know he was coming
15 in?

16 A Because the DA was telling me he
17 was supposed to come in, the kid was
18 supposed to come in.

19 Q How old was this kid?

20 A It says here he is 17 years old.

21 Q Was he with his parents?

22 A No. He was there by himself.

23 Q And did this gentleman live in
24 the Parkchester area?

25 A Let me see. Yes, 1491

1 Agostini

2 A Yes.

3 Q Did you review DD5's concerning
4 what Mr. Huello had said?

5 A I need to review them again. He
6 didn't say it to me.

7 Q Did you ever call Mr. Huello
8 asking him to come in and speak to you about
9 what he saw?

10 A No, because he was already
11 interviewed.

12 Q Who interviewed him?

13 A I don't know. I have to look at
14 the DD5.

15 Q We will come back to that.

16 Did you believe Mr. Alston's
17 story that he had agreed to do a hit for
18 hire essentially, commit murder for hire?

19 A He never made that statement to
20 me.

21 Q What specifically did Mr. Alston
22 say that caused you to believe that there
23 was probable cause to arrest Anthony
24 Manganiello for the murder of Albert Acosta?

25 A Basically he said his story that

1 Agostini

2 Parkchester security was looking either for
3 a gun for him to make a hit, okay. He
4 pointed him out on a book, photo, a book
5 photo, okay, and then he gave up Damon.

6 Q Now, did you testify a couple of
7 seconds ago that Mr. Alston never said to
8 you that a Parkchester security guard wanted
9 to hire him to commit a murder?

10 A He never said it to me.

11 Q He never did?

12 A No.

13 Q Let me direct your attention to
14 Exhibit 22. Can you read the first
15 paragraph.

16 A So then he did. After reading
17 this he did.

18 Q So Mr. Alston did in fact say to
19 you that a Parkchester security guard wanted
20 to hire him to commit an act of murder?

21 A Yes, according to this.

22 Q Did you believe him?

23 A Yes.

24 Q Did you arrest him for the
25 murder, for conspiracy to commit murder?

1 C E R T I F I C A T E

2 STATE OF NEW YORK)

3 SS:

4 COUNTY OF NASSAU)

5

6 I, KEVIN JONES, a Shorthand Reporter
7 and Notary Public in and for the State of
8 New York, do hereby certify:

9 That the testimony of DET. LUIS
10 AGOSTINI was held before me at the aforesaid
11 time and place.

12 That said witness duly sworn before the
13 commencement of the testimony and that the
14 testimony was taken stenographically by me
15 and is a true and accurate transcription of
16 my stenographic notes.

17 I further certify that I am not related
18 to any of the parties to the action by blood
19 or marriage and that I am in no way
20 interested in the outcome of this matter.

21 IN WITNESS WHEREOF, I have hereunto set
22 my hand.

23

24

25


KEVIN JONES